

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8677

File: 20-407816 Reg: 06063151

7-ELEVEN, INC., JAMI TUCKER, and MICHAEL TUCKER,
dba 7-Eleven # 2131-23229C
184 West Main Street, Brawley, CA 92227,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 6, 2008
Los Angeles, CA

ISSUED MARCH 13, 2009

7-Eleven, Inc., Jami Tucker, and Michael Tucker, doing business as 7-Eleven # 2131-23229C (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Jami Tucker, and Michael Tucker, appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated December 14, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on February 17, 2004. In June 2006 the Department filed an accusation against appellants charging that, on April 1, 2006, appellants' clerk, Tanya Sanchez (the clerk), sold an alcoholic beverage to 16-year-old Sinai Gomez. Although not noted in the accusation, Gomez was working as a minor decoy for the Brawley Police Department at the time.

At the administrative hearing held on October 31, 2006, documentary evidence was received and testimony concerning the sale was presented by Gomez (the decoy), by Department investigator Shelley Bishop, and by Dave Holetz, a Brawley police officer. The Department's decision determined that the violation charged was proved and no defense was established. Appellants then filed this appeal contending that the Department's advocate at the administrative hearing engaged in prohibited ex parte communication with the decision maker or the decision maker's advisors. They also filed a Motion to Augment Record, asking the Appeals Board to augment the record with any reports of hearing and related documents in the Department's file for this case.

DISCUSSION

Appellants contend that the Department's advocate at the administrative hearing engaged in prohibited ex parte communication with the decision maker or the decision maker's advisors. They ask the Board to remand the matter to the Department for further proceedings, as the Board has done in a number of other cases raising this issue.

The Department's one-paragraph brief states that it does not concede any issue raised by appellants, but asks the Board to remand the matter "to the Department for

disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (Quintanar) (2006) 40 Cal.4th 1."

We agree with both parties that this matter should be remanded.

ORDER

The matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.